IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2190 OF 2007

Jaswant Nai & others .... Petitioner

versus

State of Maharashtra & ors..... Respondent.

Mr. Hitesh Jain with Subhash Jadhav & Ajit Shah i/b. Abhyjeet S.Sawate for the petitioner.
Mr. N.M.Nakhawa APP for Respondent no.1.
Ms. P.H.Kantharia for respondent no.2.

CORAM; A.P. DESHPANDE, J.
DATED; 05TH DECEMBER, 2007

P.C.;

1. By this writ petition, the petitioners take an exception to an order passed below Exh.525 in Sessions Case No.634/04. The present petitioners are the accused. After closure of the evidence and when the case had reached the stage of judgment, an application came to be moved for recalling P.w.1 Bilkas Bano for the purpose of cross examination. According to the accused/petitioners, after the evidence of P.w.1 was over, she was interviewed by NDTV and the interview was aired on NDTV channel on 6-11-2007. The petitioners have contended that there is material inconsistency in the evidence on record and the statements made by P.w.1 to the said channel in her interview. To substantiate the submission, the

petitioners have placed on record a print out of the internet publication of the interview of P.w.1 Bilkas Bano. Perusal of the internet publication of the interview reveals that one Radhika Bordia of NDTV have quoted the statement of P.w.1 with the captioned text in inverted commas.

2. The learned counsel appearing for the petitioners has submitted that the following passage in the news item is wholly inconsistent with the case of the prosecution. IT reads thus:

> Because of her testimony it is one of the few cases in the riots where the prosecution has managed to get 12 of the accused including six policemen behind bars even as the case continues.

2. The contention is that in all 20 accused are facing the trial which inlcudes six policemen and two doctors besides the 12 other accused totalling 20. Careful perusal of the statement contained in the report, extracted hereinabove, would go to indicate that it is a comment or a remark of Radhika Bordia and is not a statement made by P.w.1. The above statement is not in inverted commas. It is tried to be contended that the statement speaks of 12 accused

including six policemen and thus in the submission of the learned counsel for the petitioners as there is a glaring inconsistency, the witness need to be recalled for further cross examination.

3. It will not be out of place to mention that as and when the statement made by P.w.no.1 is referred to in the report, it is in the inverted coma and concludes by the words "said Bhikis". In the first place the said statement is not made by P.w.1 and in the second place an incorrect factual position is referred therein that the prosecution has managed to get 12 of the accused including six policemen behind bars when factually there are 20 accused including six police men, two doctors and other 12 accused. Erroneous reporting of an interview or an erroneous statement made in an interview would not be a cause for recalling of the witness at the fag end of the trial, is the conclusion reached by the trial court. The trial court has also observed in the impugned order that it is not necessary to recall the witness for reaching the just decision in the case and the said exercise if resorted to, would result in further delay in decision of the case.

4. Perused the material placed on record so also the impugned order. I do not see any reason to interfere

with the impugned order. Hence Writ Petition is summarily dismissed.

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